

Federal Communications Commission

DA 99-1291

JUL 2 3 38 PM '99

Before the
 DISPATCH Federal Communications Commission
 Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 99-241
Table of Allotments,)	RM-9480
FM Broadcast Stations.)	
(Stamps and Fouke, Arkansas))	

NOTICE OF PROPOSED RULE MAKING

Adopted: June 23, 1999

Released: July 2, 1999

Comment Date: August 23, 1999

Reply Comment Date: September 7, 1999

By the Chief, Allocations Branch:

1. The Commission considers herein a petition for rule making filed on behalf of In Phase Broadcasting, Inc. ("petitioner"), permittee of Station KLMZ(FM), Channel 282A, Stamps, Arkansas, requesting the reallocation of Channel 282A from Stamps to Fouke, Arkansas, and modification of its authorization accordingly. Petitioner stated its intention to file an application to specify the new community of license if Channel 282A is reallocated to Fouke, as requested.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part "Change of Community MO&O", 5 FCC Rcd 7094 (1990). In support of the proposal petitioner reports that the requested reallocation of Channel 282A to Fouke (pop. 634),¹ an incorporated community, is mutually exclusive with its existing authorization at Stamps (pop. 2,478). The distance between Stamps and the petitioner's proposed site at Fouke is 32.5 kilometers (20 miles), whereas a minimum distance of 115 kilometers (71 miles) is required in this instance.

3. In further support of the proposal, petitioner states that the requested reallocation of Channel 282A to Fouke would result in a preferential arrangement of allotments ("Change of Community R&O" at 4873), as it would provide a first local aural transmission service to Fouke

¹Population figure was taken from the 1990 U.S. Census Reports.

without removing the sole local service at Stamps.^{2,3} Moreover, petitioner advises that its present authorization would serve a population of 28,774 at Stamps, whereas operation at Fouke would enable it to increase its level of service to 63,940 persons (+35,166) in an area of 2,513.3 square kilometers.

4. Additionally, petitioner's engineering statement advises that although Fouke is near the Texarkana urbanized area, operation on Channel 282A from its intended site at Fouke will not result in the provision of a 70 dBu signal to any part of the urbanized area, and therefore, its proposal is not subject to the provision of additional information responsive to a Tuck analysis.^{4,5}

5. In consideration of the above, we believe the petitioner's proposal warrants consideration as the reallocation request could provide Fouke with its first local aural transmission service (priority three) whereas Stamps would retain local service from Station KZHE(FM) (priority four). Our analysis confirms that Fouke is not within the Texarkana urbanized area, nor will the 70 dBu signal from proposed Channel 282A cover any part of the urbanized area. We recognize that a construction permit (File No. BPH-970716MD) has been issued for Station KLMZ(FM) but the facility has not been built. However, since the petitioner intends to relocate its transmitter site, there will be potential gain and loss areas. Petitioner has provided information regarding the potential gain area only. It should also provide information showing the areas and populations which will lose potential service if Channel 282A is removed at Stamps.⁶ The study should also identify the reception services that are now available within both the gain and loss areas.⁷

²The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. (Co-equal weight is given to priorities (2) and (3).) Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

³Station KZHE(FM), Channel 263C2, is licensed to Stamps.

⁴See Huntington Broadcasting Co. v. F.C.C., 192 F.2d 33 (D.C. Cir. 1951); RKO General, Inc. ("KFRC"), 5 FCC Rcd 3222 (1990), and Faye and Richard Tuck ("Tuck"), 3 FCC Rcd 5374 (1988).

⁵In any event petitioner provided information to demonstrate that Fouke is a bona fide community for allotment purposes, as it has its own elected government, fire and police departments, school system, water service, postal zip code (71837), business entities and churches.

⁶While the Commission has not consistently expressed the same concerns regarding loss areas where the station has not been constructed, each proposal must be considered in light of our policies and precedent to determine whether the reallocation request would result in a preferential arrangement of allotments. See Change of Community MO&O, *supra*. See also, Littlefield, Wolfforth and Tahoka, Texas, 12 FCC Rcd 3215 (1997).

⁷Reception services are those aural broadcast services that can be received within a given geographical area, including full-time AM, as well as FM commercial stations. In determining reception service provided by an FM station, the area of service circumscribed by the station's 1.0 mV/m signal contour, assuming maximum facilities for the class of station, except for Class C, should be considered. For the latter class, the minimum or existing Class C facilities, whichever is greater, should be used in the study. The area of reception service for full-time

6. Based upon the information presented, we will propose to reallocate Channel 282A from Stamps to Fouke, Arkansas, and modify the petitioner's authorization for Station KLMZ(FM) (File No. BPH-970716MD) accordingly. As the petitioner's modification request is consistent with the provisions of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 282A at Fouke, Arkansas.

7. Our analysis also reveals that Channel 282A can be allotted to Fouke, Arkansas, consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules⁸ at the petitioner's proposed city reference site at coordinates 33-15-42 NL and 93-53-06 WL.

8. Accordingly, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Fouke, Arkansas	--	282A
Stamps, Arkansas	263C2, 282A	263C2

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before August 23, 1999, and reply comments on or before September 7, 1999, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office

AM stations is defined according to whether it is a clear channel class AM station or another class of full-time AM station. For a clear channel Class A station, the reception area is defined by a station's 0.5 mV/m groundwave contour, based on its licensed facilities. For all other classes of full-time AM stations, reception service is defined as that service received within a station's nighttime interference-free contour. For purposes of determining the availability of aural services in the areas affected by a change of community proposal, the petitioner should include in its study the reception services provided by all relevant AM and FM stations. Reception areas that receive at least five radio services are considered to be well-served. Accordingly, within a given reception area, a count of radio services beyond five is unnecessary. *See Willows and Dunnigan, California*, 9 FCC Rcd 1802 (1994); *see also Garberville and Hydesville, California*, 9 FCC Rcd 3125 (1994).

⁸The Commission's data base reflects that requested Channel 282A at Fouke would be short spaced to an ADD proposal to substitute Channel 282C2 for Channel 270C2 at Paris, Texas in the context of MM Docket 95-126. However, on review, the Commission noted it was no longer necessary to make the substitution at Paris. Therefore, the instant proposal is consistent with Section 73.207(b) of the Commission's Rules.

of the Secretary, 445 Twelfth Street, S.W.; TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Cary S. Pepper, Esq.
Booth, Freret, Imlay & Pepper, P.C.
5101 Wisconsin Avenue, NW
Suite 307
Washington, DC 20016-4120

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

12. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW., Washington, D.C.